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C O N F I D E N T I A L SECTION 01 OF 03 CARACAS 002826

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SUBJECT: VENEZUELA POLITICAL PROSECUTIONS: SIMONOVIS,
VIVAS, AND FORERO

REF: A. 05 CARACAS 02633

[1](#)B. 05 CARACAS 01389

[1](#)C. 03 CARACAS 01746

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Classified By: POLITICAL COUNSELOR ROBERT R. DOWNES FOR 1.4 (D)

Summary

[1](#)1. (C) On September 6, Poloffs attended the ongoing trial of former Caracas Metropolitan Police officials Ivan Simonovis, Henry Vivas, and Lazarro Forero, and eight other police officers, who are being charged as accomplices to murder for events related to the civil disturbances and the temporary interregnum of April 2002. So far, the prosecution has been unable to link the defendants to any of the injuries or deaths, despite testimony from dozens of medical and crime scene experts over the past six months. Poloffs observed a number of irregularities which suggest the government's case is weak. Although the crime happened in Caracas, the trial is taking place some 70 miles away in Maracay, Aragua State, presumably to draw attention away from the case. Poloffs will continue to follow the trial of this politically motivated prosecution. End Summary.

Background

[1](#)2. (U) Poloffs attended the ongoing trial of former Caracas Metropolitan Police officials Ivan Simonovis, Henry Vivas, and Lazarro Forero September 6. They, along with eight other Metropolitan policemen, are charged as "necessary accomplices in complicity to commit murder and injury" in relation to two deaths and several casualties during demonstrations in downtown Caracas on April 11, 2002. At the time, Simonovis served as Secretary for Security in Greater Caracas, Vivas was head of the Caracas Metropolitan Police, and Forero was Vivas' deputy. The defendants say they were trying to keep opposition and pro-government marches separated that day and did not shoot at the crowd. On the contrary, they say many people shot at them and their trucks show hundreds of bullet holes. Press reports of the day's events indicate there were many people shooting and the government has been accused by some opposition members of calling out sharpshooters who were responsible for most of the injuries and deaths. The

policemen's case was submitted to the IACHR, which agreed to review it last spring.

US Connection Turned Against Defendant

¶3. (C) In addition to his connection to former Caracas Metropolitan Mayor and Chavez foe Alfredo Pena, Simonovis may also be targeted for U.S. ties. While Secretary of Security, he worked with William Bratton, the Police Commissioner who oversaw former New York Mayor Rudolph Giuliani's crime plan, to develop a similar plan for Caracas. A Venezuelan prosecutor told Bony Simonovis, the ex-official's wife and lawyer, that because of that connection, the BRV knows her husband was a CIA spy and that's one of the reasons he's being prosecuted.

Trial Observations Suggest Irregularities

¶4. (C) Poloffs were invited to observe the trial by Mrs. Simonovis and her colleague, Carlos Bastides. Bastides is a well-known criminal lawyer who has participated in several high-profile cases, including those of the Tachira 9 and General Felipe Rodriguez (refs a and b). The Embassy is also expanding its program of observing politically motivated prosecutions. The trial began in March 2006 and is being held in Maracay--almost 70 miles from Caracas--presumably to draw attention away from the poorly-substantiated case and to facilitate BRV attempts to condemn the officers. So far, prosecutors have been unable to link the defendants to any of the injuries or deaths, despite testimony from dozens of medical and crime scene experts. Victims and eye witnesses have yet to testify, but some of them have privately told the defense team that they know the defendants were not involved, Mrs. Simonovis said. Poloffs' observations, in addition to

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conversations with the lawyers and some of the defendants, suggest the trial is merely a political show.

-- The trial was supposed to begin at 9 am, but neither the judge, nor prosecutors showed until 11:30 am. Simonovis said this has been normal practice for them, but the defense arrives on time concerned the government will pull something if they don't. At 1 pm, the judge called for lunch recess to end "between 2:30 and 3:00 pm" (direct quote) because of the threat of rain. The judge and prosecutors returned from lunch around 3:45 pm.

--The witness came with the prosecution in an official vehicle.

--The witness, a ballistics expert, had trouble answering basic questions about the average shooting range of police weapons. Although he interviewed some of the victims, investigated their wounds, and visited the crime scene, he could not determine if any of them were shot at an angle--sharpshooters and government supporters were thought to be on the Llaguno Bridge and nearby rooftops--nor could he verify when the injuries occurred. The witness also claimed that someone with a bullet wound that went east to west was shot from a south-ward direction.

--After the recess, the prosecution informed the judge that the witness had become ill while they were having lunch with him and had left, as he came, in the prosecution's official vehicle. They were unsure if he would appear the next day. Mrs. Simonovis later told us the expert did return to testify the next day, but because of his impeached credibility, the prosecution is moving on to other witnesses and will call him back later.

--The defense told us Simonovis was not actually at the scene

April 11, but prosecutors claim they have a tape of him giving the order to shoot. However, they refuse to submit the tape for voice analysis.

--Comparisons with other related trials bolsters claims of politicization: The eleven defendants are being tried under detention, while four government supporters who were actually videotaped while shooting at the opposition were tried in liberty in 2003 (ref c). A judge later acquitted them, claiming they were acting in self-defense. Chavez responded by praising their actions in confronting "sharpshooters and terrorists dressed up as police." More recently, other pro-Chavez defendants in a separate but related case were also free pending trial, although two of them initially had evaded arrest.

Decent, But Never Certain, Prison Conditions

15. (SBU) The defendants have been in jail in Caracas for approximately two years, the police officers for three-and-a-half. Simonovis, who is being held in a DISIP cell, described to us their treatment of him as an 8 on a scale of 1 (the worst) to 10 (the best). He gave the quarters a 5. He is allowed family visits two days a week and can see his lawyers Thursday mornings; he doesn't have any time outside. The eight officers are being held together in Caracas, Parque Carabobo jail. They are held separately from other prisoners and have occasional internet access. Mrs. Simonovis told us she and other family members give food to the guards who transport the defendants to ensure they actually bring them to the court and do not mistreat them on the way.

Comment

16. (C) No one will probably ever be able to accurately determine responsibility for most of the violence during the chaos of April 2002, but for the BRV, the outcome of this and other cases related to April 2002, are essential to supporting the way Chavez wants history recorded. Those that supported him were revolutionary heroes and should be vindicated. Dissenters or those working for opposition governments are coupsters and should be punished. The government's case is weak and the prosecution knows it. The paucity of evidence presented after almost six months of

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trial, the unequal treatment of the Caracas police compared to pro-Chavez civilians, the inappropriate contact between the prosecution and the witness as observed by Poloffs, and the private messages sent to the defense support claims that this is just a politically motivated prosecution. Poloffs plan to periodically observe the trial as part of a broader program of observing similar trials and will continue to report on its progress.

WHITAKER